

House Study Bill 730 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON SHOMSHOR)

A BILL FOR

1 An Act relating to the administration of the sales and use
2 taxes under the streamlined sales tax agreement and
3 including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 321.105A, subsection 2, paragraph a,
2 unnumbered paragraph 1, Code Supplement 2009, is amended to
3 read as follows:

4 For purposes of this subsection, "purchase price" applies to
5 the measure subject to the fee for new registration. "Purchase
6 price" shall be determined in the same manner as "sales price"
7 is determined for purposes of computing the tax imposed upon
8 the sales price of tangible personal property under chapter
9 423, pursuant to the definition of sales price in section
10 423.1, ~~subsection 47~~, subject to the following exemptions:

11 Sec. 2. Section 423.1, Code 2009, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 0A. "*Affiliate*" means any entity to which
14 any of the following applies:

15 a. Directly, indirectly, or constructively controls another
16 entity.

17 b. Is directly, indirectly, or constructively controlled by
18 another entity.

19 c. Is subject to the control of a common entity. A common
20 entity is one which owns directly or individually more than ten
21 percent of the voting securities of the entity.

22 Sec. 3. Section 423.1, subsections 27, 28, and 29, Code
23 2009, are amended to read as follows:

24 27. "*Model 1 seller*" is a seller registered under the
25 agreement that has selected a certified service provider as its
26 agent to perform all the seller's sales and use tax functions,
27 other than the seller's obligation to remit tax on its own
28 purchases.

29 28. "*Model 2 seller*" is a seller registered under the
30 agreement that has selected a certified automated system to
31 perform part of its sales and use tax functions, but retains
32 responsibility for remitting the tax.

33 29. "*Model 3 seller*" is a seller registered under the
34 agreement that has sales in at least five member states,
35 has total annual sales revenue of at least five hundred

1 million dollars, has a proprietary system that calculates the
2 amount of tax due each jurisdiction, and has entered into a
3 performance agreement with the member states that establishes
4 a tax performance standard for the seller. As used in this
5 definition, a "seller" includes an affiliated group of sellers
6 using the same proprietary system.

7 Sec. 4. Section 423.1, Code 2009, is amended by adding the
8 following new subsection:

9 NEW SUBSECTION. 29A. "*Model 4 seller*" is a seller
10 registered under the agreement that is not a model 1, model 2,
11 or model 3 seller.

12 Sec. 5. Section 423.1, subsection 47, paragraph a,
13 subparagraph (6), Code 2009, is amended by striking the
14 subparagraph.

15 Sec. 6. Section 423.1, subsection 47, paragraph c, Code
16 2009, is amended to read as follows:

17 c. The sales price does not include and the sales tax shall
18 not apply to amounts received for charges included in paragraph
19 "a", subparagraphs (3) through ~~(7)~~ (6), if they are separately
20 contracted for, separately stated on the invoice, billing,
21 or similar document given to the purchaser, and the amounts
22 represent charges which are not the sales price of a taxable
23 sale or of the furnishing of a taxable service.

24 Sec. 7. Section 423.1, Code 2009, is amended by adding the
25 following new subsections:

26 NEW SUBSECTION. 52A. "*State agency*" means an authority,
27 board, commission, department, instrumentality, or other
28 administrative office or unit of this state, or any other state
29 entity reported in the Iowa comprehensive annual financial
30 report, including public institutions of higher education.

31 NEW SUBSECTION. 62. "*Voting security*" means a security to
32 which any of the following applies:

33 a. Confers upon the holder the right to vote for the
34 election of members of the board of directors or similar
35 governing body of the entity.

1 *b.* Is convertible into, or entitles the holder to receive
2 upon its exercise, a security that confers such a right to
3 vote.

4 *c.* Is a general partnership interest.

5 Sec. 8. Section 423.2, subsection 1, paragraph a, Code 2009,
6 is amended to read as follows:

7 *a.* For the purposes of this subchapter, sales of the
8 following services are treated as if they were sales of
9 tangible personal property:

10 (1) Sales of engraving, photography, retouching, printing,
11 and binding services.

12 (2) Sales of vulcanizing, recapping, and retreading
13 services.

14 (3) Sales of prepaid telephone calling cards and
15 prepaid services that use an authorization numbers code.

16 (4) Sales of optional service or warranty contracts, except
17 residential service contracts regulated under chapter 523C,
18 which provide for the furnishing of labor and materials and
19 require the furnishing of any taxable service enumerated under
20 this section. The sales price is subject to tax even if some of
21 the services furnished are not enumerated under this section.
22 Additional sales, services, or use taxes shall not be levied
23 on services, parts, or labor provided under optional service
24 or warranty contracts which are subject to tax under this
25 subsection.

26 ~~If the optional service or warranty contract is a computer
27 software maintenance or support service contract and there is
28 no separately stated fee for the taxable personal property
29 or for the nontaxable service, the tax imposed by this
30 subsection shall be imposed on fifty percent of the sales price
31 from the sale of such contract. If the contract provides for
32 technical support services only, no tax shall be imposed under
33 this subsection. The provisions of this subparagraph (4) also
34 apply to the use tax.~~

35 (5) Sales of optional service or warranty contracts for

1 computer software maintenance or support services.

2 (a) If a service or warranty contract does not specify a fee
3 amount for nontaxable services or taxable personal property,
4 the tax imposed pursuant to this section shall be imposed upon
5 an amount equal to one-half of the sales price of the contract.

6 (b) If a service or warranty contract provides only for
7 technical support services, no tax shall be imposed pursuant to
8 this section.

9 (6) Subparagraphs (4) and (5) shall also apply to the use
10 tax imposed under section 423.5.

11 Sec. 9. Section 423.2, subsection 10, Code 2009, is amended
12 to read as follows:

13 10. a. Any person or that person's affiliate, which is
14 a retailer in this state or a retailer maintaining a place
15 of business in this state under this chapter, that enters into
16 a contract with an agency of this state must register, collect,
17 and remit Iowa sales tax under this chapter on all sales of
18 tangible personal property and enumerated services.

19 b. Every bid submitted and each contract executed by a
20 state agency shall contain a certification by the bidder or
21 contractor stating that the bidder or contractor is registered
22 with the department and will collect and remit Iowa sales tax
23 due under this chapter. In the certification, the bidder or
24 contractor shall also acknowledge that the state agency may
25 declare the contract or bid void if the certification is false.
26 Fraudulent certification, by act or omission, may result in
27 the state agency or its representative filing for damages for
28 breach of contract.

29 ~~For the purposes of this subsection, the following~~
30 ~~definitions apply:~~

31 ~~a. "Affiliate" means any entity to which any of the~~
32 ~~following applies:~~

33 ~~(1) Directly, indirectly, or constructively controls~~
34 ~~another entity.~~

35 ~~(2) Is directly, indirectly, or constructively controlled~~

1 ~~by another entity.~~

2 ~~(3) Is subject to the control of a common entity. A common~~
3 ~~entity is one which owns directly or individually more than ten~~
4 ~~percent of the voting securities of the entity.~~

5 ~~b. "State agency" means an authority, board, commission,~~
6 ~~department, instrumentality, or other administrative office or~~
7 ~~unit of this state, or any other state entity reported in the~~
8 ~~Iowa comprehensive annual financial report, including public~~
9 ~~institutions of higher education.~~

10 ~~c. "Voting security" means a security to which any of the~~
11 ~~following applies:~~

12 ~~(1) Confers upon the holder the right to vote for the~~
13 ~~election of members of the board of directors or similar~~
14 ~~governing body of the entity.~~

15 ~~(2) Is convertible into, or entitles the holder to receive~~
16 ~~upon its exercise, a security that confers such a right to~~
17 ~~vote.~~

18 ~~(3) Is a general partnership interest.~~

19 Sec. 10. Section 423.5, subsection 8, Code 2009, is amended
20 to read as follows:

21 8. Any person or that person's affiliate, which is a
22 retailer in this state or a retailer maintaining a place
23 of business in this state under this chapter, that enters
24 into a contract with an agency of this state must register,
25 collect, and remit Iowa use tax under this chapter on all sales
26 of tangible personal property and enumerated services. Every
27 bid submitted and each contract executed by a state agency
28 shall contain a certification by the bidder or contractor
29 stating that the bidder or contractor is registered with the
30 department and will collect and remit Iowa use tax due under
31 this chapter. In the certification, the bidder or contractor
32 shall also acknowledge that the state agency may declare the
33 contract or bid void if the certification is false. Fraudulent
34 certification, by act or omission, may result in the state
35 agency or its representative filing for damages for breach of

1 contract.

2 ~~For the purposes of this subsection, "affiliate", "state~~
3 ~~agency", and "voting security" mean the same as defined in~~
4 ~~section 423.2, subsection 10.~~

5 Sec. 11. Section 423.46, Code 2009, is amended to read as
6 follows:

7 **423.46 Rate and base changes — liability for failure to**
8 **collect.**

9 1. The department shall make a reasonable effort to provide
10 sellers with as much advance notice as practicable of a rate
11 change and to notify sellers of legislative changes in the tax
12 base and amendments to sales and use tax rules. ~~Failure of a~~
13 ~~seller to receive notice or failure of this state to provide~~
14 ~~notice or limit the effective date of a rate change shall not~~
15 ~~relieve the seller of its obligation to collect sales or use~~
16 ~~taxes for this state~~ Except as provided in subsection 2, a
17 seller shall not be relieved of the obligation to collect sales
18 or use taxes for this state by either a failure to receive such
19 notice or by a failure of the state to provide notice.

20 2. A seller will be relieved of liability for failing to
21 collect sales or use taxes for this state at the new rate under
22 all of the following conditions and to the following extent:

23 a. The department fails to provide for at least thirty
24 days between the enactment of the statute providing for a rate
25 change and the effective date of such rate change.

26 b. The seller continues to collect sales or use taxes at the
27 rate in effect immediately prior to the rate change.

28 c. The erroneous collection described in paragraph "b" does
29 not continue for more than thirty days after the effective date
30 of the rate change.

31 3. The relief from the obligation to collect sales or use
32 taxes described in subsection 2 shall not apply if a seller
33 knowingly or fraudulently fails to collect tax at the new rate
34 or if a seller has solicited purchasers on the basis of the
35 rate in effect immediately prior to the rate change.

1 Sec. 12. Section 423.48, subsection 2, Code 2009, is amended
2 by adding the following new paragraph:

3 NEW PARAGRAPH. *h.* Upon the registration of a seller,
4 the department shall provide to the seller information
5 regarding the options available for the filing of returns and
6 remittances. Such information shall include information on
7 the requirements of filing simplified electronic returns and
8 remittances.

9 Sec. 13. Section 423.48, subsection 3, Code 2009, is amended
10 by adding the following new paragraph:

11 NEW PARAGRAPH. *d.* A model 2, model 3, or model 4 seller
12 making no sales sourced in the state in the preceding twelve
13 months may elect to be registered in the state as a seller that
14 anticipates making no sales sourced in the state. Making such
15 an election shall not relieve the seller of the obligation to
16 collect and remit sales or use taxes on sales sourced in the
17 state.

18 Sec. 14. Section 423.48, Code 2009, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 4. The provisions of this section shall not
21 be construed to relieve a seller of the obligation to register
22 in the state if required to do so, and to collect and remit
23 sales or use taxes for at least thirty-six months and to meet
24 any other requirements necessary for amnesty in Iowa under the
25 terms of an agreement as provided in section 423.54.

26 Sec. 15. Section 423.49, Code 2009, is amended by striking
27 the section and inserting in lieu thereof the following:

28 **423.49 Return requirements — electronic filing.**

29 1. Except as provided in subsection 7, all sellers
30 registered under the agreement shall file a single return per
31 month for the state and all taxing jurisdictions within this
32 state.

33 2. The director shall by rule determine the date on which
34 returns shall be filed. The date shall not be earlier than the
35 twentieth day of the following month.

1 3. The department shall provide to all registered and
2 unregistered sellers, except sellers of products qualifying for
3 exclusion from the provisions of section 308 of the agreement,
4 a simplified return that can be filed electronically.

5 a. The simplified return shall be provided in a form
6 approved by the governing board and shall not contain a field
7 unless that field has been approved by the governing board.

8 b. The simplified return shall contain two parts. The
9 first part shall contain information relating to remittances
10 and allocations. The second part shall contain information
11 relating to exempt sales.

12 c. The department shall notify the governing board if
13 the submission of the second part of the return is no longer
14 necessary.

15 d. The department shall not require a model 4 seller to
16 submit the second part of the simplified return but may provide
17 for another means of collecting the information contained in
18 the second part of the return as described in subsection 4,
19 paragraph "e".

20 4. a. A certified service provider shall file a simplified
21 return electronically on behalf of a model 1 seller and shall
22 file audit reports for the seller as provided for in article V
23 of the rules and procedures of the agreement.

24 b. A certified service provider shall file the first part of
25 the simplified return, as described in subsection 3, once per
26 month, as required pursuant to subsection 1.

27 c. A model 1 seller may file both the first and second parts
28 of the simplified return. Model 1 sellers filing both parts
29 shall also file audit reports as described in paragraph "a".

30 d. A model 4 seller may elect to file a simplified return.
31 Model 4 sellers electing to do so shall file the first part of
32 the return each month.

33 e. A model 4 seller required to register in the state may
34 submit the information collected in the second part of the
35 return in one of the following ways:

1 (1) By filing monthly both the first and second parts
2 electronically on a simplified return as described in
3 subsection 3.

4 (2) By filing the second part together with the required
5 December filing of the first part. A seller filing the second
6 part of a return pursuant to this subparagraph shall include
7 information for all months of that calendar year and shall
8 report the information in an annual rather than a monthly
9 fashion.

10 (3) The department shall notify the governing board prior to
11 requiring the submission of the second part of the simplified
12 return pursuant to this paragraph "e".

13 5. The department shall adopt rules for the filing of
14 returns by a model 4 seller electing not to file a simplified
15 return pursuant to this section.

16 6. A seller which has previously elected to file a
17 simplified return shall provide at least three months' notice
18 of an intent to discontinue the filing of such returns.

19 7. a. A seller making the election under section 423.48,
20 subsection 3, paragraph "d", is exempt from the requirements of
21 this section and shall not be required to file a return.

22 b. The exemption allowed under paragraph "a" is only
23 applicable as long as a seller makes no taxable sales in this
24 state. If a seller makes a taxable sale in this state, the
25 seller shall file a return the month after such a sale is made.

26 8. A seller may file a return for more than one legal entity
27 at the same time only if such entities are affiliated.

28 9. The department shall adopt a standardized process for the
29 transmission and receipt of returns and related information.
30 The adoption of a procedure pursuant to this subsection is
31 subject to the approval of the governing board.

32 10. a. The department shall notify a seller registered
33 under the agreement that has no obligation to register in
34 this state of a failure to file a return required under this
35 section and allow the seller at least thirty days after such

1 clarifies certain language relating to service and warranty
2 contracts.

3 The bill requires the department of revenue to make
4 reasonable efforts to notify sellers after sales tax rate
5 changes and provides a safe harbor under certain circumstances
6 to sellers who do not receive such notice.

7 The bill clarifies that the changes made in the bill do not
8 affect a seller's obligation to register in the state or to
9 meet certain requirements for amnesty under the agreement.

10 The bill allows certain sellers to register in the state as
11 sellers who do not anticipate making any sales here.

12 The bill provides for the electronic filing of simplified
13 returns and remittances, in accordance with the terms of the
14 agreement.

15 The bill eliminates the requirement in Code section 423.49
16 that a remote seller file a return in the following month if it
17 accumulates more than \$1,000 of state and local sales taxes in
18 the preceding month.

19 The bill directs the department to adopt a standardized
20 process for the remittance of sales tax payments.

21 The bill takes effect upon enactment.